



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0125; FRL-9999-47-Region 5]**

**Air Plan Approval; Ohio; Revisions to NO<sub>x</sub> SIP Call and CAIR**

**Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving under the Clean Air Act (CAA) a request from the Ohio Environmental Protection Agency (Ohio EPA) to revise the Ohio State Implementation Plan (SIP) to incorporate revisions to Ohio Administrative Code (OAC) Chapter 3745-14 regarding the Nitrogen Oxides (NO<sub>x</sub>) SIP Call and the removal of OAC Chapter 3745-109 regarding the Clean Air Interstate Rule (CAIR). This SIP revision ensures continued compliance by Electric Generating Units (EGUs) and large non-EGUs with the requirements of the NO<sub>x</sub> SIP Call.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0125. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Summary of proposed action.
- II. What comments did EPA receive?
- III. What actions is EPA taking?
- IV. Incorporation by Reference.

## V. Statutory and Executive Order Reviews.

### **I. Summary of proposed action.**

Under CAA section 110(a)(2)(D)(i)(I), called the good neighbor provision, states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state from contributing significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS), or interfering with maintenance of the NAAQS, in any other state.

On October 27, 1998, EPA published the NOx SIP Call, which required eastern states, including Ohio, to submit SIPs that prohibit excessive emissions of ozone season NOx by implementing statewide emissions budgets (63 FR 57356). The NOx SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NOx emissions, one of the precursors of ozone. EPA developed the NOx Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NOx SIP Call. This trading program allowed certain EGUs and large non-EGUs to participate in a regional cap and trade program. In fulfillment of the requirements of the NOx SIP Call, Ohio EPA promulgated OAC Chapter 3745-14 which, among other things, required EGUs and large non-EGUs in the state to participate in

the NOx Budget Trading Program. On August 5, 2003, EPA published an action approving OAC Chapter 3745-14 into the Ohio SIP (68 FR 46089).

On May 12, 2005, EPA published CAIR, which required eastern states, including Ohio, to submit SIPs that prohibited emissions consistent with annual and ozone season NOx budgets and annual sulfur dioxide (SO<sub>2</sub>) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM<sub>2.5</sub>) NAAQS. Like the NOx SIP Call, CAIR also established several trading programs that states could use as mechanisms to comply with the budgets. When the CAIR trading program for ozone season NOx was implemented beginning in 2009, EPA discontinued administration of the NOx Budget Trading Program, but the requirements of the NOx SIP Call continued to apply. To meet the requirements of CAIR, Ohio EPA promulgated OAC Chapter 3745-109, which required EGUs to participate in the CAIR annual SO<sub>2</sub> and annual and ozone season NOx trading programs. Participation by EGUs in the CAIR trading program for ozone season NOx addressed the state's obligation under the NOx SIP Call for those units. Ohio EPA also opted to incorporate large non-EGUs previously regulated under OAC Chapter 3745-14 into OAC Chapter 3745-109, to meet the obligations of the NOx SIP Call with respect to those units through the CAIR trading program as

well. On September 25, 2009, EPA published an action approving OAC Chapter 3745-109 into the Ohio SIP (74 FR 48857).

On August 8, 2011, EPA published the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS (76 FR 48208). Through Federal Implementation Plans (FIPs), CSAPR required EGUs in eastern states, including Ohio, to meet annual and ozone season NO<sub>x</sub> budgets and annual SO<sub>2</sub> budgets implemented through new trading programs. CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season NO<sub>x</sub> generally addressed the state's obligation under the NO<sub>x</sub> SIP Call for EGUs. However, CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NO<sub>x</sub> SIP Call for non-EGUs.

EPA stopped administering the CAIR trading programs with respect to emissions occurring after December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.

On October 26, 2016, EPA published the CSAPR Update, which established a new ozone season NO<sub>x</sub> trading program for EGUs in eastern states, including Ohio, to address the good neighbor

provision for the 2008 ozone NAAQS (81 FR 74504). As under CSAPR, participation by a state's EGUs in the new CSAPR trading program for ozone season NOx generally addressed the state's obligation under the NOx SIP Call for EGUs. The CSAPR Update also expanded options available to states for meeting NOx SIP Call requirements for large non-EGUs by allowing states to incorporate those units into the new trading program.

After evaluating the various options available following CSAPR Update, Ohio EPA chose to meet the ongoing NOx SIP Call requirements for existing and new large non-EGUs by modifying its existing regulations at OAC Chapter 3745-14 to make the portion of the budget assigned to large non-EGUs under that program enforceable without an allowance trading mechanism.

Specifically, while Ohio rescinded portions of its NOx Budget Trading Program rules under OAC Chapter 3745-14 pertaining to individual unit allowance allocations and trading, the state retained and amended the provisions of those rules pertaining to applicability, the statewide emissions budgets for EGUs and large non-EGUs, and monitoring and reporting under 40 CFR part 75. Ohio also retained a provision of the trading program rules exempting EGUs covered by a more recent ozone season NOx trading program from coverage under the state's amended program, but updated the provision to base the exemption on participation in the CSAPR Update trading program for ozone

season NOx instead of the corresponding CAIR trading program. In addition, Ohio retained other rules under OAC Chapter 3745-14 addressing NOx emissions from cement kilns and stationary internal combustion engines outside the NOx Budget Trading Program. Finally, Ohio also rescinded its CAIR trading program rules in OAC Chapter 3745-109 in full.

Ohio's February 5, 2018 submission requests that EPA update Ohio's SIP to reflect the revised rules at OAC Chapter 3745-14 and the rescission of rules at OAC Chapter 3745-109. On June 27, 2019, EPA proposed to approve Ohio's request (84 FR 30681). EPA's proposed rule contains a detailed analysis of Ohio's submission.

## **II. What comments did EPA receive?**

In response to our proposed rule, EPA received one comment, submitted on behalf of the Ohio Utilities and Generation Group and its member companies. This comment was supportive of EPA's proposed action. Therefore, EPA is finalizing this action as proposed.

## **III. What actions is EPA taking?**

EPA is approving Ohio EPA's request to modify its SIP to include the revisions at OAC Chapter 3745-14 and to remove OAC Chapter 3745-109.

## **IV. Incorporation by Reference.**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, EPA is finalizing the removal of provisions of the EPA-Approved Ohio Regulations and Statutes from the Ohio SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## **V. Statutory and Executive Order Reviews.**

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal

implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 27, 2019.

Cathy Stepp,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1870, the table in paragraph (c) is amended by:

a. Revising the section entitled "Chapter 3745-14 Nitrogen Oxides - Reasonably Available Control Technology"; and

b. Removing the section entitled "Chapter 3745-109 Emissions Trading Programs".

The revision reads as follows:

**§ 52.1870 Identification of plan.**

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(c) \* \* \*

**EPA--APPROVED STATE OHIO REGULATIONS**

Ohio Citation	Subject	Ohio Effective Date	EPA approval date	Comments
* * * * *				
<b>Chapter 3745-14 Nitrogen Oxides - Reasonably Available Control Technology</b>				
3745-14-01	Definitions and General Provisions	1/28/2018	[insert date of publication in the Federal Register], [insert Federal Register citation]	
3745-14-03	The NOx Budget Permit Requirements	1/28/2018	[insert date of publication in the Federal Register], [insert Federal Register citation]	
3745-14-04	Compliance Certification	1/28/2018	[insert date of publication in the Federal Register], [Insert Federal Register citation]	

3745-14-08	Monitoring and Reporting	1/28/2018	[insert date of publication in the Federal Register], [insert Federal Register citation]	
3745-14-11	Portland Cement Kilns	7/18/2002	8/5/2003, 68 FR 46089	
3745-14-12	Stationary Internal Combustion Engines	5/7/2005	2/4/2008, 73 FR 6427	
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